

Staff Summary Report



Council Meeting Date: 08-14-2008

Agenda Item Number: _____

SUBJECT: Request approval to utilize an eleven-month City of Scottsdale contract with PFM Asset Management LLC for investment management services for the Accounting Division.

DOCUMENT NAME: 20080814fst19 **PURCHASES (1004-01)**

SUPPORTING DOCS: Yes

COMMENTS: (FS05RP029) Total cost of this contract shall not exceed \$200,000.

PREPARED BY: Ted Stallings, CPPB, Procurement Officer, 480-350-8617

REVIEWED BY: Jerry Hart, Financial Services Manager, 480-350-8505
Michael Greene, CPM, Central Services Administrator, 480-350-8516
Karen Huffman, Controller, 480-350-8256

**LEGAL REVIEW AS
TO CONTRACT FORM**

ONLY: David Park, Assistant City Attorney, 480-350-8907

FISCAL NOTE: Fees are netted against interest based upon earnings.

RECOMMENDATION: Approve the utilization of the contract.

ADDITIONAL INFO: The City of Scottsdale issued a solicitation and awarded a contract for investment management services. The solicitation has cooperative use language which allows other municipalities and agencies to participate in the contract. Staff recommends approval to utilize the City of Scottsdale contract with PFM Asset Management LLC for investment management services.

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT, made and entered into this ___ day of August, 2008, by and between the City of Tempe, a Municipal Corporation of the State of Arizona, hereinafter referred to as the "Client", and PFM Asset Management LLC, hereinafter referred to as the "Consultant".

WITNESSETH

THAT, Arizona Revised Statutes 11-952 and 41-2632 allow public agencies to engage in cooperative purchasing agreements and intergovernmental agreements and contracts;

WHEREAS, the Consultant entered into a Professional Services Contract dated as of July 5, 2005, as amended and supplemented (collectively, the "Scottsdale Contract") with the City of Scottsdale Arizona ("Scottsdale") pursuant to a procurement process conducted through a request for proposals;

WHEREAS, Section 4.21, entitled "Co-Op Use of Contract", of the Scottsdale Contract provides as follows:

In addition to the City of Scottsdale, this Agreement may be extended for use by other municipalities, government agencies and governing bodies, including the Arizona Board of Regents, and political subdivisions of the State. Any such usage by other entities must be in accord with the ordinances, charter and/or rules and regulations of the respective entity and the approval of the Contractor.

THAT, the [EXECUTIVE] is authorized and empowered by provisions of the Client to execute contracts for professional services;

WHEREAS, the Client desires to contract for Investment Management Services;

WHEREAS, the Consultant is duly qualified to perform the requested services;

WHEREAS, the Client wishes to utilize access to the Scottsdale Contract in order to enter into this Contract with the Consultant;

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1.0 DESCRIPTION, ACCEPTANCE, DOCUMENTATION

The Consultant shall act under the authority and approval of the Contract Administrator for the Client, further named herein, to provide the professional services required by this Contract.

1.1 SERVICE DESCRIPTION

The entire Scope of Work for Request for Proposal No.05RP029 identified as Investment Management Services is incorporated herein by this reference as fully as if written out below. The Consultant's proposal submitted in response to Scottsdale's Request for Proposal Number 05RP029 and dated April 12, 2005 is incorporated herein by this reference as fully as if written out below. If any provision incorporated by reference from the Scope of Work conflicts with any provision of the Consultant's proposal, the provision of the Scope of Work will control. If any provision of the Consultant's proposal conflicts with any provision of this Contract, this Contract will control.

1.2 ACCEPTANCE AND DOCUMENTATION

- A. Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.
- B. The Client shall provide all necessary information to the Consultant for timely completion of the tasks specified in Item 1.1 above.
- C. All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Contract are to be and remain the property of the Client and are to be delivered to the Contract Administrator before final payment is made to the Consultant.

2.0 BILLING RECORDS, AUDIT, FEES

2.1 FEE SCHEDULE

Consultant shall be paid according to following schedule:

9 basis points (0.09%)	First \$200 million of assets under management;
6 basis points (0.06%)	On assets under management greater than \$200 million

Billing shall be on a monthly basis on the average assets under management for the month. Monthly invoices shall be sent to the Contract Administrator for approval, and the fees will be deducted from the portfolio custodial account.

Amounts indicated in this Section 2.1 represent the entire amounts payable under this Contract. Additional expenses will not be authorized.

2.2 PAYMENT APPROVAL

All charges must be approved by the Contract Administrator prior to payment.

2.3 PRICE ADJUSTMENT

Amounts indicated in Section 2.1 will be honored for the entire length of the one (1) year initial contract period plus the four (4) additional one-year extensions, as described in the RFP.

3.0 TERM, EXTENSION, TERMINATION

3.1 TERM AND EXTENSION

The term of this Contract shall be for a one (1) year period. The Client and the Consultant may mutually agree to extend this Contract for four (4) more one (1) year periods upon the recommendation of the Contract Administrator and the Client.

3.2 TERMINATION

Termination for Convenience: The Client reserves the right to terminate this contract or any part hereof for its sole convenience with thirty (30) days' written notice. In the event of such termination, the Consultant shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and Subcontractors to cease such work. As compensation in full for services performed to the date of such termination, the Consultant shall receive a fee for the percentage of services actually completed. This fee shall be in the amount to be mutually agreed upon by the Consultant and the Client, based on the agreed Scope of Work. If there is no mutual agreement, the Contract Administrator shall determine the percentage of completion of each task detailed in the Scope of Work and the Consultant's compensation shall be based upon such determination. The Client shall make this final payment within sixty (60) days after the Consultant has delivered the last of the partially completed items. The Consultant shall not be paid for any work done upon receipt of the notice of termination, nor for any costs incurred by Consultant's suppliers or Subcontractors, which Consultant could reasonably have avoided.

Termination for Cause: The Client may also terminate this contract or any part hereof with seven (7) days' notice for cause in the event of any default by the Consultant, or if the Consultant fails to comply with any of the terms and conditions of this contract. Unsatisfactory performance as judged by the Contract Administrator, and failure to provide the Client, upon request, with adequate assurances of future performance shall all be causes allowing the Client to terminate this contract for cause. In the event of termination for cause, the Client shall not be liable to the Consultant for any amount, and the Consultant shall be liable to the Client for any and all damages sustained by reason of the default which gave rise to the termination.

In the event the Consultant is in violation of any Federal, State, County or Client law, regulation or ordinance, the Client may terminate this contract immediately upon giving notice to the Consultant.

3.3 FUNDS APPROPRIATION

If the Client does not appropriate funds to continue this Contract and pay for charges hereunder, the Client may terminate this Contract at the end of the current fiscal period. The Client agrees to give written notice pursuant to Section 4.11 of termination to the Consultant at least thirty (30) days prior to the end of its current fiscal period and will pay to the Consultant all approved charges incurred through the end of such period.

4.0 GENERAL TERMS

4.1 ENTIRE AGREEMENT

This Contract constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Contract may not be modified or amended except by a written document, signed by authorized representatives of each party.

4.2 ARIZONA LAW

This Contract shall be governed and interpreted according to the laws of the State of Arizona.

4.3 MODIFICATIONS

Any amendment, modification or variation from the terms of this Contract shall be in writing and shall be effective only after approval of all parties signing the original Contract.

4.4 ASSIGNMENT

Services covered by this Contract shall not be assigned or sublet in whole or in part without the prior written consent of the Contract Administrator.

4.5 SUCCESSORS AND ASSIGNS

This Contract shall extend to and be binding upon the Consultant, its successors and assigns, including any individual, company, partnership or other entity with or into which Consultant shall merge, consolidate or be liquidated, or any person, corporation, partnership or other entity to which Consultant shall sell its assets.

4.6 CONTRACT ADMINISTRATOR

The Contract Administrator for the Client shall be Karen Huffman (Controller). The Contract Administrator shall oversee the execution of this Contract, assist the Consultant in accessing the organization, audit billings, and approval of payments. The Consultant shall channel reports and special requests through the Contract Administrator.

4.7 RECORDS AND AUDIT RIGHTS

The Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Client to substantiate charges and claims related to this Contract shall be open to inspection and subject to audit and/or reproduction by the Client's authorized representative to the extent necessary to adequately permit

evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of its payees pursuant to the execution of this Contract. The Client's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

RECORDS AND AUDIT RIGHTS – CONT'D

The Consultant shall require all Subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this article by insertion of the requirements hereof in a written contract agreement between the Consultant and payee. Such requirements will also apply to any and all Subcontractors.

If an audit in accordance with this article discloses overcharges, of any nature, by the Consultant to the Client in excess of one percent (1%) of the total contract billings, the actual cost of the Client's audit shall be reimbursed to the Client by the Consultant. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Consultant's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the Client's findings to the Consultant.

4.8 ATTORNEY'S FEES

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

4.9 INELIGIBLE BIDDER

The preparer of specifications is not eligible to submit a bid or proposal on the solicitation for which they prepared the specification, nor is the preparer eligible to supply any product to a bidder or offeror on the solicitation for which they prepared the specification.

4.10 INDEPENDENT CONTRACTOR

The services which the Consultant provides under the terms of this Contract to the Client are that of an Independent Contractor, not an employee, or agent of the Client. The Client will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

The Client shall not withhold income tax as a deduction from contractual payments. As a result of this, the Consultant may be subject to I.R.S. provisions for payment of estimated income tax. The Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

4.11 CONFLICT OF INTEREST

The Client may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Client's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice from the Client is received by all other parties to the contract, unless the notice specifies a later time (A.R.S. § 38-511).

4.12 NOTICES

All notices or demands required to be given pursuant to the terms of this Contract shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of the Consultant:

Lauren Brant
Managing Director
PFM Asset Management LLC
50 California St., Suite 2300
San Francisco, CA 94111

In the case of the Client:

Karen Huffman
Controller
City of Tempe
20 East Sixth Street
Tempe, AZ 85281

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

4.13 FORCE MAJEURE

Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

4.14 TAXES

The Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultants performance of this contract. The Client shall have no obligation to pay any amounts for taxes, of any type, incurred by the Consultant.

4.15 ADVERTISING

No advertising or publicity concerning the Client using the Consultant's services shall be undertaken without prior written approval of such advertising or publicity by the Client's Contract Administrator.

4.16 COUNTERPARTS

This Contract may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Contract shall be deemed to possess the full force and effect of the original.

4.17 CAPTIONS

The captions used in this Contract are solely for the convenience of the parties, do not constitute a part of this Contract and are not to be used to construe or interpret this Contract.

4.18 SUBCONTRACTORS

During the performance of the Contract, the Consultant may engage such additional Subcontractors as may be required for the timely completion of this Contract. The addition of any Subcontractors shall be subject to the prior approval of the Client.

In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Contract rests with the Consultant.

4.19 INDEMNIFICATION

To the fullest extent permitted by law, the Consultant, its successors, assigns and guarantors, shall defend, indemnify and hold harmless the Client, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by the Consultant relating to work or services in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of the Consultant's and Subcontractor's employees.

Insurance provisions set forth in this agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

4.20 CHANGES IN THE WORK

The Client may at any time, as the need arises, order changes within the scope of the work without invalidating this Contract. If such changes increase or decrease the amount due under the contract documents, or in the time required for performance of the work, an equitable adjustment shall be authorized by written Change Order.

CHANGES IN THE WORK – CONT'D

The Client will execute a formal Change Order based on detailed written quotations from the Consultant for work related changes and/or a time of completion variance. All Change Orders are subject to approval by the Client.

Contract Change Orders are subject to the Rules and Procedures within the Client's Procurement Code.

4.21 INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS AND COOPERTIVE PURCHASING

As described in the recitals to this Contract, the Client is entering into this Contract pursuant to the access granted to the Client pursuant to the Statutes and the Scottsdale Contract.

5.0 INSURANCE

This Contract contains two samples of Certificates of Insurance, the Standard ACORD Certificate and the Certificate developed by the Client.

The Client's Certificate is preferred, however, the ACORD Certificate is acceptable provided it is identical to the sample attached and contains the additional language and deleted language as reflected on the sample.

Failure to provide a Certificate of Insurance with the appropriate verbiage as indicated on the attached samples, will result in rejection of your certificate and delay in contract execution.

Additionally, Certificates of Insurance submitted without referencing an RFP and Contract number will be subject to rejection and returned or discarded.

Insurance Representations and Requirements – Cont'd

5.1 Insurance Representations and Requirements

5.1.1 General: The Consultant agrees to comply with all applicable Client ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of the Consultant, the Consultant shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B ++ 6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to the Client. Failure to maintain insurance as specified may result in termination of this Contract at the Client's option.

- 5.1.2 No Representation of Coverage Adequacy: By requiring insurance herein, the Client does not represent that coverage and limits will be adequate to protect the Consultant. The Client reserves the right to review any and all of the insurance policies and/or endorsements cited in this Contract but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Contract or failure to identify any insurance deficiency shall not relieve the Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.
- 5.1.3 Coverage Term: All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of subject contract are satisfactorily performed, completed and formally accepted by the Client, unless specified otherwise in this Contract.
- 5.1.4 Claims Made: In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the work or services as evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three year period.
- 5.1.5 Policy Deductibles and or Self Insured Retentions: The policies set forth in these requirements may provide coverage which contain deductibles or self insured retention amounts. Such deductibles or self insured retention shall not be applicable with respect to the policy limits provided to the Client. The Consultant shall be solely responsible for any such deductible or self insured retention amount. The Client, at its option, may require The Consultant to secure payment of such deductible or self insured retention by a surety bond or irrevocable and unconditional Letter of Credit.
- 5.1.6 Use of Subcontractors: If any work under this Contract is subcontracted in any way, the Consultant shall execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting the Client and the Consultant. The Consultant shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.
- 5.1.7 Evidence of Insurance: Prior to commencing any work or services under this Contract, the Consultant shall furnish the Client with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by Consultant's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage, conditions, and limits of coverage and that such coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, the Client

shall reasonably rely upon the Certificate of Insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this agreement.

Evidence of Insurance – Cont'd

If any of the above cited policies expire during the life of this Contract, it shall be the Consultant's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions.

Certificates shall specifically cite the following provisions:

1. The Client, its agents, representatives, officers, directors, officials and employees shall be named an Additional Insured under the following policies:
 - a) Commercial General Liability
 - b) Auto Liability
 - c) Excess Liability - Follow Form to underlying insurance as required.
2. The Consultant's insurance shall be primary insurance as respects performance of subject contract.
3. All policies, except Professional Liability insurance, if applicable, waive rights of recovery (subrogation) against the Client, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by the Consultant under this Contract.
4. Certificate shall cite a 30-day advance notice of cancellation provision. If an ACORD Certificate of Insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

5.2 Required Coverage

- 5.2.1 Commercial General Liability: The Consultant shall maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 01 07 98 or equivalent thereof, including but not limited to, separation of insureds clause. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying.

Insurance Representations and Requirements - Cont'd

- 5.2.2 Financial Institutions Bonds: The Consultant shall maintain Financial Institution coverage, including but not limited to, Bankers Error and Omissions, Computer Crime, Employee Dishonesty, and Theft, Robbery and Burglary On and Off Premises coverage, naming the Client as an Additional Insured and Loss Payee as applies to subject Investment

Management Services. Limits of Liability shall be \$50,000.00 per Occurrence and in the Aggregate or in an amount not less than the highest amount of total exposed dollars at any one time.

5.2.3 Vehicle Liability: The Consultant shall maintain Business Automobile Liability insurance with a limit of \$500,000 each accident on the Consultant's owned, hired, and non-owned vehicles assigned to or used in the performance of the Consultant's work or services under this Contract. Coverage will be at least as broad as Insurance Services Office, Inc. coverage code "1" "any auto" policy form CA 00 01 07 97 or equivalent thereof. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying.

5.2.4 Workers Compensation Insurance: The Consultant shall maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of the Consultant's employees engaged in the performance of work or services under this Contract and shall also maintain Employers' Liability Insurance of not less than \$500,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

6.0 SEVERABILITY AND AUTHORITY

6.1 SEVERABILITY

If any term or provision of this Contract shall be found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Contract shall remain in full force and effect and such term or provision shall be deemed to be deleted.

6.2 AUTHORITY

Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

7.0 REQUEST FOR TAXPAYER I.D. NUMBER & CERTIFICATION I.R.S. W-9 FORM

Prior to any contract payment being made, the attached I.R.S. Form **must** be completed and submitted to the following address:

City of Tempe
31 East Fifth Street
Tempe, AZ 85281
ATTN:

IN WITNESS WHEREOF, the City of Tempe, Arizona by its [EXECUTIVE] and City Clerk have hereunto subscribed their names this ____ day of May, 2008.

CITY OF TEMPE, ARIZONA

PFM ASSET MANAGEMENT LLC:

By: _____
[EXECUTIVE, TITLE]

By: _____

ATTEST:

By: _____

[CLIENT] REVIEW:

[CLIENT] CONTRACT ADMINISTRATOR

[NAME]
[TITLE]

By: _____

[NAME]
[TITLE]

APPROVED AS TO FORM:

[NAME]
City Attorney